

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

*Town of Hull v. AmerisourceBergen Drug Corp.,
et al.*, Case No. 1:19-op-46172 (CT 20)

*County of Monterey v. AmerisourceBergen Drug
Corp., et al.*, Case No. 1:18-op-45615 (CT 21)

MDL NO. 2804

Case No. 17-MD-2804

Judge Dan Aaron Polster

**PBM DEFENDANTS' REPLY IN FURTHER SUPPORT OF MOTION FOR
CLARIFICATION AND TO STRIKE THE AMENDED COMPLAINTS AGAINST
THE PBM DEFENDANTS IN THE ALBERTSONS BELLWETHER CASES**

Express Scripts, Inc. and OptumRx, Inc. (**PBM Defendants**) jointly submit this reply in further support of their motion for clarification and to strike the amended complaints filed against the PBM Defendants in the Albertsons bellwether cases (Dkt. 5633).

The PEC attempts to rewrite the Court's May 23 Order (Dkt. 5455), which governs the process for plaintiffs seeking to amend pleadings against new defendants in this MDL, by suggesting that it applies only to "non-bellwether cases." Dkt. 5643 at 3. Not so. The May 23 Order is clear: "[f]or each defendant the PEC wishes to add to any case, the PEC shall file a *single* motion to amend the complaints of *all* plaintiffs who wish to add that defendant," and "[t]his will be plaintiffs' final opportunity to amend their complaints." Dkt. 5455 at 1–2 (emphasis in original). The Court did not carve out an exception for bellwether plaintiffs. To the contrary, the Order expressly governs "*all* plaintiffs," and the Order's caption states that it applies to "All Cases."

The PEC argues that CMO-1 entitles bellwether plaintiffs to amend complaints irrespective of the May 23 Order. But unlike CMO-1, the May 23 Order is a narrow and specific directive that

governs one topic: “plaintiffs who wish to add . . . defendant[s].” Dkt. 5455 at 1. On that narrow topic, the May 23 Order sets out the process controlling the “final opportunity” for “*all* plaintiffs” in “All Cases”—bellwether and non-bellwether—to file motions for leave to amend to add defendants. *Id.* at 1–2.

The PEC’s reliance on *In re Nat’l Prescription Opiate Litig.*, 2022 WL 20701236 (6th Cir. Nov. 10, 2022) (*Meijer*), is misplaced. That ruling predates the May 23 Order and thus does not speak to its effect. Moreover, the defendant in *Meijer* argued that the plaintiff was required to seek leave to amend under Rule 16 because the Court’s previous amendment deadline had passed. *Id.* at *1. Here, Plaintiffs Town of Hull and County of Monterey *did* seek the Court’s leave to amend their complaints—they joined omnibus motions for leave to amend against select defendants in accordance with the May 23 Order. Dkt. 5547-1; Dkt. 5548-1; Dkt. 5546-1. The fact that both of these bellwether plaintiffs participated in the May 23 Order’s process confirms that the May 23 Order—not CMO-1—governs the final opportunity for all plaintiffs to file motions for leave to amend to add defendants.

The PBM Defendants therefore respectfully request that the Court: 1) clarify that its September 9 Order did not authorize the PEC to circumvent its May 23 Order by filing amended complaints against the PBM Defendants in the Albertsons bellwether cases; and 2) strike the amended complaints filed against the PBM Defendants because they did not comply with the May 23 Order (Dkts. 5629, 5631).

Date: September 24, 2024

Respectfully submitted,

/s/ Brian D. Boone

Brian D. Boone

ALSTON & BIRD LLP

Vantage South End

1120 South Tryon Street, Suite 300

Charlotte, NC 28203

Tel: (704) 444-1000

brian.boone@alston.com

William H. Jordan

ALSTON & BIRD LLP

1201 West Peachtree Street NW, Suite 4900

Atlanta, GA 30309

Tel.: (404) 881-7000

bill.jordan@alston.com

Attorneys for OptumRx, Inc.

/s/ Jonathan G. Cooper

Michael J. Lyle

Jonathan G. Cooper

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

1300 I St. NW, Suite 900

Washington, DC 20005

Tel: (202) 538-8000

mikelyle@quinnemanuel.com

jonathancooper@quinnemanuel.com

Attorneys for Express Scripts, Inc.